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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/592,983	06/06/2008	Daniel Trost	016382-9018	7330
23409	7590	02/04/2010	EXAMINER	
MICHAEL BEST & FRIEDRICH LLP 100 E WISCONSIN AVENUE Suite 3300 MILWAUKEE, WI 53202				BLACK, MELISSA ANN
3612		ART UNIT		PAPER NUMBER
02/04/2010		MAIL DATE		DELIVERY MODE
				PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/592,983	TROST, DANIEL
	<b>Examiner</b>	<b>Art Unit</b>
	MELISSA A. BLACK	3612

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_ is/are allowed.  
 6) Claim(s) 1-20 is/are rejected.  
 7) Claim(s) \_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 15 September 2006 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>9/15/06</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application |
|  | 6) <input type="checkbox"/> Other: _____ .                        |

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The information disclosure statement filed 9/15/2006 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

### ***Claim Objections***

2. Claims 5-9 and 13 are objected to because of the following informalities: Claim 5 depends from itself, and claims 6-9 and 13 depends from claim 5. Appropriate correction is required. To further prosecution, examiner is interpreting that claim 5 is to depend from claim 4.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 5-9 and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 5 depends from itself. Claim is being interpreted to depend from claim 4, in order to further prosecution.

### ***Specification***

5. The substitute specification filed 9/15/09 has not been entered because it does not conform to 37 CFR 1.125(b) and (c) because: a marked-up copy of the substitute specification

has not been supplied (in addition to the clean copy); a clean copy of the substitute specification has not been supplied (in addition to the marked-up copy).

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by DE 197 13 606 C1 to Siring et al.

Siring discloses an actuation device for a flap element (1-3), of a variable top receptacle having at least one wall element (1 and 3) that is pivotable between a first and a second position (see figures 1-3 solid and dotted lines show both positions), wherein the actuation device (13) comprises a fixedly borne spring element that is arranged and constructed to traverse a point of maximum elastic deformation between its first and second position by interacting with the wall element during pivoting of the wall element and wherein the spring element is arranged and constructed so as to assume a substantially unbiased state in each of the first and second positions (see figure 1). RE claim 16, Siring discloses A vehicle comprising: a stowable top movably disposed on a body of the vehicle, a receptacle at least partially disposed in a rear portion of the vehicle body, wherein the receptacle defines a volume that is variable by pivoting a wall element (1, 3) thereof between a first position defining a maximum receptacle volume and

a second position defining a minimum receptacle volume (see figure 1), wherein the receptacle is arranged and constructed to accommodate the stowable top in the first position, and an actuation device (13) comprising a spring element fixedly borne on the vehicle body, the spring element being arranged and constructed to contact the wall element at least during pivoting movement of the wall element and to traverse a point of maximum elastic deformation of the spring element between the first and second position of the wall element, wherein the spring element is arranged and constructed such that the restoring force of the spring element is substantially at a minimum when the wall element is disposed in the first position and the second position, respectively (see figure 1).

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 2-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 197 13 606 C1 to Siring et al in view of US Pat # 5,855,408 to Rickabus.

Siring fails to disclose wherein the spring element is a leaf spring, further comprising a fixed bracket wherein one end of the leaf spring is substantially rigidly supported on the bracket in a longitudinal direction of the leaf spring and another end of the leaf spring is movably supported in the longitudinal direction of the leaf spring, wherein the leaf spring includes two legs connected via a curved portion, wherein the curved portion is arranged and curved such that its curvature lies within an angle traversed by the wall element during its pivoting movement and

wherein the middle point of its radius of curvature and the pivotal axis of the wall element lie on opposing sides of the leaf spring, wherein the spring element is arranged and constructed to cooperate with a lever element that is fixedly disposed on the wall element, wherein the lever is affixed to the wall element proximal to the pivotal axis of the wall element, wherein the lever element is cam-shaped, wherein the point of maximum deflection of the spring element lies substantially at the bisecting line of the angle (a) between the first and second positions of the wall element, wherein the spring element elastically biases the wall element at least in the first or the second position.

Rickabus teaches the use of a spring element for traversing an element (20) from a first position to a second position (figures 2-4), wherein the spring element is a leaf spring, further comprising a fixed bracket (22) wherein one end of the leaf spring is substantially rigidly supported on the bracket (22) in a longitudinal direction of the leaf spring and another end of the leaf spring is movably supported in the longitudinal direction of the leaf spring, wherein the leaf spring includes two legs (62,64) connected via a curved portion (see figures), wherein the curved portion is arranged and curved such that its curvature lies within an angle traversed by the element (20) during its pivoting movement and wherein the middle point of its radius of curvature and the pivotal axis of the element (20) lie on opposing sides of the leaf spring (see figures 2-4), wherein the spring element is arranged and constructed to cooperate with a lever element (52) that is fixedly disposed on the element, wherein the lever is affixed to the element proximal to the pivotal axis (42) of the element, wherein the lever element is cam shaped (see figures), wherein the point of maximum deflection of the spring element lies substantially at the bisecting line of the angle between the first and second positions of the element (see figures),

wherein the spring element elastically biases the element (20) at least in the first or the second position (see figures 2-4).

It would have been obvious to one with ordinary skill in the art to use the actuation device of Rickabus on the device of Siring in order to take up less space in the storage area of Siring, furthermore, it is a mere exchange of spring elements for pivoting bodies.

RE Claims 17-20, Siring discloses a bracket (near 9) mounted on a trunk lid for wall element (3) to pivot (see figure 1).

Siring fails to disclose the spring element is a leaf spring, wherein a first end of the leaf spring is substantially rigidly supported on the bracket in a longitudinal direction of the leaf spring and a second end of the leaf spring is movably supported in the longitudinal direction of the leaf spring, wherein the actuation device further comprises a lever element rigidly affixed to the wall element proximal to the pivotal axis of the wall element, wherein the leaf spring is arranged and constructed to be deflected by the lever element during pivoting movement of the wall element, wherein the lever element is cam-shaped.

Rockabus teaches a spring element is a leaf spring, wherein a first end of the leaf spring is substantially rigidly supported on the bracket (22) in a longitudinal direction of the leaf spring and a second end (64) of the leaf spring is movably supported in the longitudinal direction of the leaf spring, wherein the actuation device further comprises a lever (52) element rigidly affixed to the element (20) proximal to the pivotal axis of the element, wherein the leaf spring is arranged and constructed to be deflected by the lever element (52) during pivoting movement of the wall element, wherein the lever element is cam-shaped (see figures).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to use the actuation device as taught by Rockabus to move the device of Siring in order to take up less room in the cargo area, and it is a mere exchanging of actuation elements.

***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US Pat # 3,608,130 to Rudnick discloses a hinge with a cam lever in use with a leave spring in order to bias a door element.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELISSA A. BLACK whose telephone number is (571)272-4737. The examiner can normally be reached on M-F 7:00-3:30 ET.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Dayoan can be reached on (571) 272-6659. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Application/Control Number: 10/592,983  
Art Unit: 3612

Page 8

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3612

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